

October 3, 1997

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION ON APPEAL OF THRESHOLD DETERMINATION

SUBJECT: Department of Development and Environmental Services File No. B97C0118

SPRINT INGLEMOOR SITE
Threshold Determination Appeal

Location: 10052 Northeast 137th Street, Kirkland, Washington

Applicant: Sprint Spectrum, represented by: Loren Combs, Esq.
1102 Broadway, Suite 500, Tacoma, WA 98402

Appellants: Joe and Mare Sullivan, et al., represented by: Kirk R. Wines, Esq.
410 Boston Street, Seattle, WA 98109

SUMMARY OF DECISION:

Department's Preliminary: Deny the Appeal
Department's Final: Deny the Appeal
Examiner: Deny the Appeal

PRELIMINARY MATTERS:

Application submitted: May 20, 1997
Notice of appeal received by Examiner: August 13, 1997
Statement of appeal received by Examiner: August 13, 1997

EXAMINER PROCEEDINGS:

Pre-Hearing Conference: August 25, 1997
Hearing Opened: September 29, 1997

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Antennae/electronic transmission facilities
- Aesthetics - visual impacts

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Applicant:	Sprint Spectrum
Applicant's Representative:	Loren Combs
	1102 Broadway, #500 Tacoma, WA 98402
Appellants:	Joe and Mare Sullivan, et al
Appellants' Representative:	Kirk R. Wines, Esq.
	410 Boston Street Seattle, WA 98109
Location:	10052 Northeast 137th Street, Kirkland
STR:	NW/SW 20-26-05
Zoning:	Community Business (CB)
Project:	Construction of a 100-foot monopole (possibly to be increased at a future date to 120 feet to accommodate co-location) with up to 12 panel-type antennas for use as a minor communica-tions facility with associated equipment
Community Plan:	Northshore
Drainage Sub-basin:	Juanita Creek

2. On May 20, 1997, Sprint Spectrum LP submitted an environ-mental checklist to King County in support of a building permit application to construct a 100-foot tall monopole topped with an array of up to 12 panel antennas for cellular telephone transmission. Each antenna panel is proposed to be approximately five feet long and one-half foot wide. The pole and supporting ground level electronics cabinets are proposed to be placed on a 20 by 24 foot leasehold site located near the northeast corner of a 4-acre shopping center. The property is in the Juanita area and lies east of 100th Avenue Northeast and northwest of Juanita-Woodinville Way at approximately Northeast 137th Street.

The proposed site is within a paved service area at the back of a large commercial building anchored by a Safeway super-market. The leasehold property and contiguous parcels to the south and west are zoned Community Business while adjacent parcels to the north and east are zoned R-18 and are developed with apartments and townhouses. As one moves away from the intersection of 100th Avenue Northeast and Juanita-Woodinville Way to the east, west and north,

single family residential neighborhoods are encountered. South of the CB zone lies the City of Kirkland.

3. A Determination of Nonsignificance ("DNS") was issued for the Sprint Inglemoor application on July 15, 1997. On July 25, 1997, a timely appeal of the DNS was received from the owners of seven single-family residential properties located north of the proposed site within the Boyd Farm Estates neighborhood, who were joined by Sue Forbes, the president of the Chantrey Estates Condominium Association. A pre-hearing order was issued on August 29, 1997, which defined the issue subject to review within the SEPA threshold determination appeal as consisting of the aesthetic impacts of the proposed monopole and antenna facility on neighboring residential properties. As stated within the Appellants' appeal statement, their concern with the proposal is that "views which now look toward trees and hills will not be impaired with the presence of an unsightly structure which is out of proportion to all the other elements in the visual field".

Because the proposed site is located within a valley, the monopole would be visible over a fairly wide area, including hillsides to the east and west. The most attractive views in the area are from the slopes of Finn Hill west of the site where residential properties have a panoramic view east to the Cascade foothills.

4. The Appellants have submitted a series of photographs which undertake to depict the visual impacts of the proposed mono-pole and antenna complex on a range of properties within the larger neighborhood. Because a 60-foot tall temporary pole has been sited by the Applicant in the approximate location of the 100-foot pole proposed for permanent construction, the orientation of the proposed facility vis-a-vis off-site properties is easily identified, and a clear field reference exists for projecting the size of the proposed permanent facility. Appellant Mare Sullivan testified that the photographs were taken by her and her husband with a Canon Rebel 35mm camera, which has a zoom lens capacity. Ms. Sullivan testified that at least some of the photographs were taken with a telephoto setting, a fact which is plainly evident from an examination of the more distant photographs. Ms. Sullivan is a high school science teacher and explained that where an adequate section of the temporary pole was not visible, she used a trigonometric formula to estimate the permanent pole height for projection onto the photographic images. Because the Applicant's checklist suggests the possibility that future additions to the pole might result in its being raised to a 120-foot height, the permanent pole projections in the photographs were usually for facilities in excess of 100 feet, most often in the range of 110 feet. No attempt was made by the Appellant to calibrate the width of the permanent monopole.
5. Based on the witness testimony and the photographic data we find the visual exhibits submitted by the Appellants to be reliable with respect to the directional location of the permanent monopole on the horizon. The projected height of the permanent monopole in comparison with the temporary facility is also generally accurate, subject to the qualification that the projected heights are greater than 100 feet and in some instances may approach 120 feet. The thickness and darkness of the projected monopole figures have been exaggerated within the photographs.
6. The most severe limitation on the usefulness of the Appellants' photographs lies with employment of the telephoto lens. While a telephoto may not affect the relationship between a temporary monopole and the superimposition of a permanent facility at the same ground location, it clearly distorts the relationship between the monopole and fore-ground features, making the monopole appear larger than it really is when viewed from the camera position. This distortion

severely constrains use of the photographic exhibits for evaluating the intensity of the visual impact.

7. The closest residential development to the proposed monopole site is the Westwood Square Apartments located directly to the north. The two-story units which abut the northern line of the Safeway property now have an unattractive view of the commercial parking and service area from their backside windows. Additional vegetative screening along the rear property line as required by the building permit should improve the quality of views from these nearest buildings. Views from units on the north side of the Westwood Square Apartments at some locations will have a full front exposure to the monopole across an interior yard and parking area. None of the Appellants live in Westwood Square Apartments.
8. A similar situation obtains with respect to the Hazelgrove development lying along the eastern boundary of the Safeway parcel. Here the back windows for the closest of the two-story units will benefit from additional vegetative screen-ing along the property line, while the upper pole will be visible from the fronts of the furthest units over the tops of intervening structures and vegetation. As depicted within the Appellants' photographs, in the foreground of the front porch views from the further units is a crowded and visually cluttered parking area. No Appellants reside within the Hazelgrove development.
9. The Appellants' photographs also depict views of the proposed tower from the Juanita Vista neighborhood located southeast of the project across Juanita-Woodinville Way. Although two houses on the east side of 103rd Avenue Northeast face toward the monopole site at a distance of approximately 500 feet, most houses in this neighborhood are oriented away from the monopole. We also note from the photographs that there is substantial vegetative screening for this neighborhood along Juanita-Woodinville Way and that above-ground telephone and power line facilities are prominently evident. No Appellants live within the Juanita Vista neighborhood.
10. Chantrey Estates is a newer townhome development located north of Hazelgrove and northeast of the proposed Sprint monopole location. The permanent monopole, as proposed, will be visible from the fronts of units located on the north edge of the development at a distance of 350-400 feet. As depicted in the Appellants' photographs, existing views from Chantrey Estates are mainly comprised of the other buildings within the development, with some ornamental landscaping present and the open sky above. As noted, the Chantrey Estates Condominium Association president is an Appellant within this proceeding.
11. The remaining Appellants all live within Boyd Farm Estates north of the proposed site beyond the Westwood Square Apart-ments. A number of residences within this development will be able to see the top portion of the permanent monopole rising above the tree line and over nearby houses. Three homes on the north side of Northeast 139th Street will face the monopole at a distance of about 650 to 700 feet. The Appellants' photographs overstate the probable visual effects of the permanent monopole on Boyd Farm Estates properties to the extent that strict representation of the facility at the 100-foot height would render it barely visible in many instances and the use of higher millimeter telephoto shots to represent effects on this neighborhood appears to have been pervasive. The tower will also be visible to automobiles entering the Boyd Farm Estates neigh-borhood from the north along 101st Place Northeast over the top of the Westwood Square Apartments and its associated landscaping.
12. Finally, the Appellants' photographs demonstrate that the monopole will be visible from Finn

Hill to the west which lies at a higher elevation and overlooks not only the monopole but the roofs of the Safeway shopping center as well. For properties west of 97th Avenue Northeast, the monopole will be part of the territorial valley view and will be located against the backdrop of foothills foliage below the skyline. Properties east of 97th Avenue Northeast lie at a lower elevation and will see the monopole tower protruding above the background tree level. Most of the Appellants' photographs appear to be taken at a distance in excess of 1000 feet from the monopole, a circumstance that was overcome by the use of a telephoto lens. While none of the Appellants reside in the Finn Hill area, two residents, Mr. Fabion and Mr. Turner, testified at the public hearing portion of the proceeding and complained of the potential visual impacts.

13. Issues of secondary importance which were raised during various stages of the public review process under SEPA for this project include hearing testimony on behalf of the Appellants by Mr. Pelascini, a real estate broker who offered his opinion that houses near monopoles take longer to sell and must be marketed at a reduced price. This testimony was subjective and impressionistic, being unsupported by any studies or data. As such, it was of minimal evidential value. The SEPA review process also generated a number of letters from neighborhood residents, some of whom are also Appellants. In addition to tower visibility, these letters demonstrate concern over potential adverse affects from electro-magnetic radiation, an issue which has been preempted from local review by the federal Telecommunications Act of 1996.
14. Paul Wozniak, the County planner who did the SEPA review for this application, also testified at the hearing. He stated that he had been in the neighborhood perhaps a dozen times, mostly in response to citizen communications relating to the possible visual effects of the facility. His conclusion was that the visual impacts of the monopole will be less than significant due to nearby vegetative screening, the orientation of nearby residences away from the monopole location, the siting of the monopole within a commercial context, and the absence of specific view amenities such as mountains or lakes within the neighborhood. He also looked for potential nearby co-location sites and found none to be available.

CONCLUSIONS:

1. The basic standard to be applied to the review of a threshold determination appeal is that the SEPA record must demonstrate the actual consideration of relevant environmental impacts. With respect to those relevant impacts shown to be actually considered, the decision of the SEPA official is entitled to substantial weight on review and shall not be overturned unless clearly erroneous based on the record as a whole.
2. The SEPA record discloses actual consideration by the Department of Development and Environmental Services of the potential environmental impacts of this proposal. Mr. Wozniak's testimony evinced a detailed review of potential visual impacts, an effort which is also documented within the DNS document itself. Therefore, the SEPA decision is entitled to substantial weight on review.
3. While aesthetic impacts are a part of the environment subject to SEPA review, by their nature they do not lend themselves easily to quantitative analysis. It has consistently been this Office's position that mere visibility does not render a monopole facility generative of significant adverse environmental impacts. If mere visibility were the test, then no monopoles could ever be located in urban areas outside of large industrial or commercial zones.

A second obvious consideration is that while monopoles may be tall they are also thin. At worst, they produce annoyance and not major blockage. This annoyance does not rise to the level of a significant adverse impact unless it directly impairs a view of specific importance or the facility is so close to the viewer that it dominates the perspective.

4. There are no critical views in this neighborhood in the sense of an attraction like a mountain or a lake. The best views are territorial and are obtained from Finn Hill, but most of Finn Hill lies at a substantial distance from the project, is blessed with wide territorial views, and looks down at the roofs of the shopping center as well as the tower. For most of Finn Hill the tower lies below the foothill horizon, and those lower properties which view the monopole above the horizon also see the rest of the shopping center complex. The view impacts to Finn Hill properties may be widespread, but they are not significant.
5. The other properties of special concern would be the nearby apartment and townhouse developments, all of which are close enough to the project that sheer proximity could translate into a significant impact. With respect to these structures, the closest buildings are oriented away from the tower site and are already adversely affected by a pre-dominant view consisting of the rear service areas and parking lot for the commercial shopping center. For these properties, the enhanced visual screening that the Applicant will be required to provide will probably create a net visual benefit over the existing condition. Other units which are further set back will view the upper portion of the tower over the tops of buildings, trees and parking areas. The addition of a tower to this scene will be adverse but less than significant in terms of the already heavily urbanized visual context.
6. The views from further north within the single-family neighborhood for Boyd Farm Estates where most of the Appellants live will also be adverse from some properties but less than significant. The adversity results from the fact that the neighborhood is otherwise devoid of utility structures above ground, but the significance is mediated by distance and intervening trees and structures. Even though the potential for further expansion has been identified, representation of the tower at heights above 100 feet is not warranted at this time because such expansion will require a new application entailing a conditional use permit with its own SEPA review and appeal process.
7. Because the concept of adverse visual impacts lacks objective precision, its application in this context is necessarily influenced by the constellation of regulations and policies which govern the siting of communications facilities within King County. The proposed Sprint facility meets all required height, setback, landscaping and zoning requirements designed to mitigate impacts on neighboring properties. It is therefore difficult to justify a conclusion, in the absence of exceptional circumstances, that a facility which complies with applicable protective standards and policies is nonetheless significantly adverse in its effect. On the facts before us, for a different conclusion to be reached as to the aesthetic acceptability of this proposal, the County would need to adopt more strict regulatory standards governing the siting of such facilities. SEPA, by itself, is an inadequate tool for such a task.
8. In the absence of a finding of significant adverse environmental impacts, questions as to alternative sites and appropriate mitigations do not seriously arise. While a mitigated determination of nonsignificance based on adverse impacts which are less than significant is a theoretical possibility, the County has not adopted policies or regulations which provide the substantive authority necessary to support imposing such conditions of mitigation.

9. Based on the record, the decision of the SEPA official is not clearly erroneous, is supported by the evidence of record, and assures that there is no probability of significant adverse environmental impacts.

DECISION:

The threshold determination appeal is DENIED.

ORDERED this 3rd day of October, 1997.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 3rd day of October, 1997, to the following parties and interested persons:

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MINUTES OF THE SEPTEMBER 29, 1997, PUBLIC HEARING ON DDES FILE NO. B97C0118 - SPRINT INGLEMOOR SITE:

Stafford L. Smith was this Hearing Examiner for this proceeding. Participating at the hearing were Barbara Heavey, Paul Wozniak, Brian Faubion, John Lukas, Jim Turner, Loren Combs, Mare Sullivan, Kirk Wines, Scott Piper, Bill Mead, Dick Pelascini, Scott Stewart, Bruce Protzer, Charles Sanders and Sue Forbes.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 Department of Development and Environmental Services Report to the Hearing Examiner
- Exhibit No. 2 Determination of Nonsignificance for Sprint Inglemoor Site B97C0118 issued July 15, 1997
- Exhibit No. 3 Environmental Checklist dated May 20, 1997
- Exhibit No. 4 Appeal of Determination of Nonsignificance for Sprint Inglemoor Site B987C0118
- Exhibit No. 5 Title Sheet/Site Plan, T-1, dated August 7, 1997
- Exhibit No. 6 Architectural details, A-2, dated August 7, 1997
- Exhibit No. 7 SEPA file
- Exhibit No. 8 GIS vicinity map
- Exhibit No. 9 Letter dated August 30, 1997, from Syliva Tarkington to Ms. Miller
- Exhibit No. 10 Excerpt from County-wide Planning Policies (pp 33 - 34)
- Exhibit No. 11 Photographic packet submitted by Mare Sullivan (admitted for limited purposes)
- Exhibit No. 12 Area map used in Stewart testimony
- Exhibit No. 13 Letter from Wade and Susan Gilbert
- Exhibit No. 14 Shopping Center Lease between Juanita Firs Shopping Center and Sprint-Spectrum

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